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13 UNITED STATES DISTRICT COURT
14 DISTRICT OF NEVADA

15 Shawn Glover, Jr.,
16 Petitioner,
17 v.
18 Warden Reubart, *et al.*,
19 Respondents.

Case No. 3:22-cv-00207-LRH-CSD

**First Amended Petition for a Writ
of Habeas Corpus Pursuant to 28
U.S.C. § 2254**

20 The State holds Shawn Glover, Jr., in violation of the United States
21 Constitution. He asks that this Court grant his petition for a writ of habeas corpus
22 and order the State to release him from his unconstitutional confinement pursuant
23 to the judgment entered October 15, 2018.
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PROCEDURAL HISTORY

A. State Court Proceedings

1. Trial and Direct Appeal

On February 4, 2016, an indictment was issued charging Shawn Glover, Jr., with open murder with use of a deadly weapon, assault with a deadly weapon, ownership or possession of firearm by prohibited person, and discharge of a firearm from or within a structure of vehicle. (02/04/2016 Indictment.)

A five-day jury trial occurred between July 31, 2018, and August 3, 2018. The jury found Glover guilty of murder in the first degree with use of a deadly weapon. The jury also convicted him on the three remaining counts in the indictment. (08/03/2018 Verdict.) On October 10, 2018, Glover was sentenced to life without the possibility of parole on the murder count with a consecutive term of 4 to 15 years on the weapon enhancement. (10/15/2018 Judgment of Conviction.) The remaining sentences were ordered to run concurrently to each other and to the sentence on the murder. (*Id.*) The judgment of conviction was entered on October 15, 2018. (*Id.*)

Glover timely appealed. He raised the following three claims on direct appeal:

- I. There was insufficient evidence presented at trial to overcome the presumption of innocence and thereby to sustain the convictions against Shawn Glover.
- II. Mr. Glover was denied his constitutionally guaranteed right to a fair trial when the state attempted to shift the burden of proof to him.
- III. Mr. Glover was denied his constitutionally guaranteed right to a fair trial when the court allowed the state to solicit from Miranda Sutton and Akira Veasley improper character evidence.

(04/17/2019 OB in Case No. 77425.)

On October 24, 2019, the Nevada Supreme Court issued its order of affirmance. (10/24/2019 Order of Affirmance.) Remittitur issued on November 18, 2019. (11/18/2019 Remittitur.)

B. State Post-Conviction Proceedings

On March 5, 2020, Glover moved for the withdrawal of his trial attorney and for the appointment of counsel to represent him in his postconviction proceedings. (03/05/2020 Motion.) On April 30, 2020, the court granted the motion and appointed counsel to represent Glover on his post-conviction petition. (04/30/2020 Minute Order.)

On September 14, 2020, appointed counsel filed a Petition for Writ of Habeas Corpus (Post-Conviction). (09/14/2020 Petition.) He raised two grounds for relief:

1. Trial counsel provided ineffective assistance to the petitioner by failing to object to testimonial hearsay introduced in violation of *Crawford v. Washington*.
2. Trial counsel provided ineffective assistance to the petitioner by possessing a conflict of interest resulting from the public defender's office previous representation of Fleming in a criminal case.

(09/14/2020 Petition.) The court issued a notice of nonconforming document, indicating that the petition initiated a new civil action, but had been made up of multiple documents submitted together. (09/17/2020 Notice.) The State moved to strike the petition due to this notice. (11/13/2020 Response.) On January 4, 2021, Glover filed an amended petition, which was identical to the original petition, except for the cover page. (01/4/2021 Amended Petition; 01/08/2021 Hearing Tr. at 4.)

On February 25, 2021, the state district court issued a findings of fact, conclusions of law and order denying the petition. (02/25/2021 FOFCOLO.) Glover timely appealed and raised the following two claims:

1. The District Court Erred By Not Finding Trial Counsel Provided Ineffective Assistance To Glover By Failing To Object To Testimonial Hearsay Introduced In Violation Of *Crawford v. Washington*. The District Court Further Erred By Failing To Grant An Evidentiary Hearing Regarding This Claim

1 2. The District Court Erred By Failing To Find Trial
2 Counsel Provided Ineffective Assistance To Glover By
3 Possessing A Conflict Of Interest Resulting From The
4 Public Defender's Office Previously Representing Fleming
5 In A Criminal Case. The District Court Further Erred By
6 Failing To Grant An Evidentiary Hearing Regarding This
7 Claim

8 (9/23/2021 OB in No. 82700.) On February 3, 2022, the Nevada Court of Appeals
9 issued an Order of Affirmance. (02/03/2022 Order of Affirmance.)

10 **C. Federal Court Proceedings**

11 On May 6, 2022, this Court filed Glover's 28 U.S.C. § 2254 petition. (ECF No.
12 1-1.) On July 26, 2022, this Court granted Glover's request for the appointment of
13 counsel and appointed the Federal Public Defender to represent Glover. (ECF No.
14 12.) On August 25, 2022, Assistant Federal Public Defender Jonathan Kirshbaum
15 appeared as counsel. (ECF No. 14.)

16 **STATEMENT REGARDING 28 U.S.C. § 2254(D)**

17 With respect to each ground for relief in this petition, Glover alleges any
18 rulings from the Nevada appellate courts denying him relief on the merits are (or
19 would be) (1) contrary to, and/or an unreasonable application of, clearly established
20 Federal law, as determined by the Supreme Court of the United States; and/or (2) are
21 (or would be) based on an unreasonable determination of the facts in light of the
22 evidence presented in the State court proceeding.

23 Glover also asserts for the purposes of further review that the standard of
24 review in 28 U.S.C. § 2254(d) violates the U.S. Constitution, specifically the
25 Suspension Clause (Article One, Section Nine, clause two); fundamental principles of
26 separation of powers (Articles One, Two, Three); the ban on cruel and unusual
27 punishments (Amendments Eight and Fourteen); and the guarantee of due process
28 (Amendments Five and Fourteen). *But see Crater v. Galaza*, 491 F.3d 1119 (9th Cir.
29 2007) (rejecting some of these arguments).

1 2 GROUND FOR RELIEF

3 **Ground One: Glover's Right to Due Process under the Fifth and**
4 **Fourteenth Amendments to the United States**
5 **Constitution Was Violated Because the Evidence Was**
6 **Legally Insufficient to Support the Convictions.**

7 **Statement of Exhaustion:** This claim was raised, and decided, on direct
8 appeal. (04/17/2019 OB in Case No. 77425; 10/24/2019 Order of Affirmance.)

9 A defendant's right to due process is violated if a conviction is not supported
10 by legally sufficient evidence.

11 **A. Factual Background**

12 In December 2015, Patrick Fleming, his wife Miranda Sutton, their 21-year-
13 old daughter Akira Veasley, and their 12-year-old twins, moved into a townhouse in
14 North Las Vegas with their goddaughter Angela. (08/01/2018 Trial Transcript ("Trial
15 Tr.") at 42-44, 91.) Shortly after that, around Christmas Eve, Shawn Glover moved
16 into the townhouse. Glover and Angela have a daughter in common. (*Id.* at 45-46.)

17 Sutton and Veasley testified at trial that, on the morning of January 1, 2016,
18 Glover shot and killed Fleming. However, in their initial statements to the police
19 given on the day of the shooting, neither Sutton nor Veasley stated that Glover had
20 committed the shooting. Rather Sutton indicated that she did not know who shot
21 Fleming and Veasley indicated the shooter was a man named Hatch, who had come
22 over to the house to buy marijuana from Fleming.

23 In contrast to their initial statements to the police, Sutton and Veasley testified
24 at trial that on the morning January 1, 2016, Glover shot Fleming after a
25 confrontation between them in the townhouse. The incident began when Fleming had
26 returned from taking Angela to work. (08/01/2018 Trial Tr. at 46-48.) Fleming got
27 into an argument with Veasley over her behavior the night before. (08/01/2018 Trial

1 Tr. at 46-48, 92.) The argument was loud and took place in the downstairs garage.
2 Sutton was present in the garage during the argument. (*Id.*)

3 According to Sutton, at some point during the argument, Glover came
4 downstairs with the phone and told Sutton that Angela was on the phone and wanted
5 to speak to her. (*Id.* at 49-50.) After Miranda told Angela that everything was okay,
6 Glover went back upstairs. (*Id.*) Later, as the argument in the garage was winding
7 down, Glover returned to the garage. Sutton testified that Glover asked her to come
8 upstairs with him, which she did. She claimed that Glover asked her if she wanted
9 him to handle the situation. She told him that everything was fine and not to worry.
10 (*Id.*)

11 Sutton testified that shortly after Fleming and Veasley had come back upstairs
12 Fleming confronted Glover about wanting to talk to his wife. (*Id.* at 52.) Glover
13 indicated he was concerned because of the heated argument in the garage. (*Id.*)
14 According to Sutton, when Fleming attempted to touch Glover on his shoulder, Glover
15 pulled away “like man, get off me, you’re too close to me.” (*Id.*) Fleming then looked
16 at Glover and said “do we have a problem, do we need to talk?” Fleming suggested he
17 and Glover go downstairs to talk. (*Id.*)

18 Sutton told Fleming that he did not need to talk to Glover, but Fleming pushed
19 Sutton to the side and walked downstairs. (*Id.*) Glover followed Fleming down the
20 stairs. Sutton then went towards Angela’s bedroom when she heard three gunshots.
21 (*Id.* at 53-54.) Sutton and Veasley ran to the landing at the top of the stairs and saw
22 Fleming lying on the floor and Glover standing over him holding a gun. (*Id.* at 53-54,
23 96.) Sutton testified that Glover pointed the gun at her and said something to the
24 effect of “don’t tell on me.” Sutton later testified that Glover threatened her, saying
25 “if you and your kids want to live, you’ll shut the fuck up.” (*Id.* at 54.) Glover left and
26 Veasley called 911. (*Id.* at 55-56.)
27

1 On cross examination, both Sutton and Veasley acknowledged that they told
2 the police a different story immediately after the shooting. Sutton admitted that, in
3 the 911 call, she originally told the police that she did not know who had shot her
4 husband. (*Id.* at 68.) Sutton struggled to provide a coherent explanation for why she
5 told a different story to the police. Her explanations varied: “I was afraid, so I initially
6 liked to the police”; “I really don’t – don’t even remember that part”; “I’m not sure if I
7 lied to them”; “I believe I said that”; “I might have said that”; “I don’t know.” (*Id.* at
8 68-79.) She also was unable to answer simple and direct questions on cross
9 examination, particularly with respect to questions about her original statement to
10 the police. (*Id.*)

11 For her part, Veasley admitted on cross examination that she initially told the
12 police that someone named Hatch, who had come over to buy marijuana from
13 Fleming, had shot Fleming. She also indicated that Hatch had been waiting upstairs
14 during the argument, but at some point had come downstairs to talk to Sutton. She
15 further stated that Fleming was upset about Hatch sticking his nose into family
16 business. (*Id.* at 103-05.)

17 **B. Argument**

18 Glover’s right to due process was violated because his murder conviction was
19 based on legally insufficient evidence. The State presented no physical evidence tying
20 Glover to the crime. There was no fingerprint evidence that linked Glover to the
21 crime. There was no DNA evidence collected from inside the townhouse or from any
22 of the ballistics evidence, like the .40 caliber shells found at the crime scene.

23 Instead, the case against Glover relied solely on the testimony from Sutton and
24 Veasley. However, their testimony was fundamentally flawed. These two witnesses
25 told a completely different story at trial than the one they told to the police
26 immediately after the shooting. In contrast to her trial testimony implicating Glover,
27 Sutton stated in the 911 call when she was still under the stress of the incident that

1 she did not know who had shot Fleming. She could not credibly explain why, in a
2 moment devoid of reflection, she told the 911 operator that she did not know who had
3 shot Fleming. She provided various reasons for her inconsistency: she was afraid, she
4 did not remember, she did know, she was not sure what she said. She repeatedly
5 refused to give answers to simple and direct questions. Her inconsistency in her
6 accounts of what happened rendered her testimony entirely untrustworthy.

7 The same can be said about Veasley. She told multiple versions of what
8 happened that day. While she pointed the finger at Glover at trial, she told the police
9 a man named Hatch shot Fleming. Hatch was a customer of Fleming and was at the
10 house to buy marijuana. Although Veasley later stated Hatch was Glover, her
11 description of Hatch as a customer over to buy marijuana was a different person than
12 Glover, who was living in the house at the time. This core inconsistency in her story
13 severely undermines the credibility of her testimony.

14 Because the only evidence against Glover cannot be considered reliable, the
15 convictions were not based on legally sufficient evidence. Glover's right to due process
16 was violated. The writ should be granted, the judgment of conviction vacated, and the
17 charges dismissed.

18
19 **Ground Two: Glover's right to due process under the Fifth and**
20 **Fourteenth Amendments to the United States**
21 **Constitution was violated based upon prosecutorial**
22 **misconduct when the prosecutor attempted to shift the**
23 **burden of proof unto Glover.**

24 **Statement of Exhaustion:** This claim was raised, and decided, on direct
25 appeal. (04/17/2019 OB in Case No. 77425; 10/24/2019 Order of Affirmance.)

26 Prosecutorial misconduct in closing argument can violate a defendant's
27 constitutional rights if the comments so infect the trial with unfairness as to make
the resulting conviction a denial of due process.

1 In closing argument, defense counsel argued that the prosecution had not
2 proven beyond a reasonable doubt that Glover was the one who committed the crime.
3 (08/03/2018 Trial Tr. at 26.) He pointed out that there was no physical evidence
4 connecting Glover to the crime. (*Id.* at 32-34.) He argued that the only evidence
5 against Glover were the unreliable and “suspect” testimony from Sutton and Veasley.
6 (*Id.* at 33-34.) He argued there was no corroboration for their testimony. (*Id.*) He also
7 pointed out there was no real evidence establishing intent or motive. (*Id.* at 36.)

8 In rebuttal, the prosecutor then attempted to shift the burden of proof on to
9 the defense. First, the prosecutor stated, “And I’m waiting for Mr. Bashor to answer
10 the question, well where was his client?” (08/03/2018 at 37-38.) Counsel’s objection
11 was sustained and the court asked counsel to rephrase the comment. (*Id.* at 38.) The
12 prosecutor then stated, “He [defense counsel] said – Mr. Bashor said, as he was
13 making his comment about this Defendant, is the Defendant was not even there.
14 Where is the evidence about that?” (*Id.*) The jury was never told to disregard this
15 comment.

16 The prosecutor’s misconduct in closing violated Glover’s right to due process.
17 The State’s question to the jury—“Where is the evidence about that?”—clearly shifted
18 the burden of proof from the State to the defendant. The question told the jurors that
19 in order for them to consider the defense’s argument challenging the State’s evidence
20 against him, the defense needed to present to them some evidence. This comment
21 violated a fundamental notion of our criminal justice system—the State has the
22 burden to prove the defendant guilty beyond a reasonable doubt. When the prosecutor
23 tells the jury, through argument, that the defense needs to produce evidence, the
24 prosecutor shifts the burden upon the defendant in violation of due process under the
25 Fifth and Fourteenth Amendments. Critically, this comment was not responsive to
26 any argument from the defense. The defense limited its argument exclusively to the
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1 prosecution's failure to prove its case beyond a reasonable doubt. There was no
2 justification for this comment. Yet, the jury was not told to disregard it.

3 Accordingly, when the prosecution shifted the burden of proof onto Glover,
4 Glover's right to due process was violated. The writ should be granted, the judgment
5 of conviction should be vacated, and a new trial should be ordered.

6
7 **Ground Three: Glover was deprived of his right to the effective**
8 **assistance of counsel under the Sixth and Fourteenth**
9 **Amendments to the United States Constitution when**
10 **trial counsel failed to object to testimonial hearsay**

11 **Statement of Exhaustion:** This claim was raised, and decided, in the state
12 post-conviction appeal. (9/23/2021 OB in No. 82700; 02/03/2022 Order of Affirmance.)

13 A defendant is entitled to the effective assistance of counsel. To establish a
14 claim that an attorney provided constitutional ineffective representation, a defendant
15 must establish that his attorney's performance was deficient, in that counsel's
16 performance fell below an objective standard of reasonableness, and this deficient
17 performance caused him prejudice, in that but for counsel's deficient performance,
18 there is a reasonable probability the outcome of the proceedings would have been
19 different.

20 **A. Factual Background**

21 Prior to trial, Dr. Timothy Dutra—a medical doctor employed by the Clark
22 County Coroner Medical Examiner—performed an autopsy on the victim, Patrick
23 Fleming. Dr. Dutra produced an autopsy report that contained his findings and
24 conclusions regarding the cause and manner of death. At trial, the State called Dr.
25 Jennifer Corneal, rather than Dr. Dutra, to present information contained in the
26 autopsy report, as well as information contained in an investigative file presumably
27 produced by the Clark County Coroner's Office.

1 At trial, Dr. Corneal testified that Dr. Dutra performed the autopsy of Fleming.
2 (08/01/2018 Trial Tr. at 121.). Dr. Corneal had merely reviewed the autopsy report
3 and investigative files, including photographs, as it related to the autopsy performed
4 on Fleming on January 2, 2016. (*Id.*)

5 Dr. Corneal testified that Fleming was shot in the back of his head on the left
6 side. (*Id.* at 123.) The entrance wound was located in the back of Fleming's head. (*Id.*
7 at 123-24.) The trajectory of the projectile was left to right, and downward. (*Id.* at
8 126.) The projectile passed through Fleming's brain, which transected his brain stem
9 and immediately incapacitated him. (*Id.* at 127.) Dr. Corneal testified that she did
10 not observe any soot or stippling that would indicate the gun was fired at close range.
11 (*Id.* at 128.) She further testified she could not determine the range at which the gun
12 was fired possibly due to Fleming's thick hair, which may have absorbed the soot—
13 the gray material deposited around the wound edges—and/or the stippling—the
14 unburnt gun powder that strikes the skin during a shooting at close range. (*Id.*)

15 Patrick was also shot in his inner, right upper arm, and in the right groin area.
16 (*Id.* at 129-30.) The trajectory of the projectile in the groin area was right to left, front
17 to back and downward. (*Id.* at 131.) Dr. Corneal testified that the gunshot wound to
18 the head was the cause of Patrick's death, and the manner of death was homicide.
19 (*Id.*)

20 Counsel did not object to Dr. Corneal's testimony under the Confrontation
21 Clause.

22 **B. Argument**

23 Counsel was ineffective for failing to object to the admission of testimonial
24 hearsay. Evidence of Fleming's autopsy, including all of the testimonial conclusions
25 in the autopsy report, was admitted at trial, even though the expert who performed
26 the autopsy, Dr. Dutra, did not testify. Dr. Dutra's findings and conclusions were
27 clearly testimonial as the information in the report would have led an objective

1 witness to reasonably believe that the statements would be available to be used at a
2 later trial. The report contained, among other things, Dr. Dutra's opinion as to the
3 cause and manner of death in a homicide case. This evidence was clearly
4 incriminating as it was used to support the State's theory about the manner in which
5 the shooting occurred. Because it was testimonial, Glover had the right to question
6 Dr. Dutra about his work if the State intended to use it against him.

7 Although the State was allowed to present the evidence to the jury, Glover was
8 not provided the opportunity to question Dr. Dutra about his methodology,
9 competence as an expert, and other factors relevant to the weight and admissibility
10 of the testimony concerning the autopsy provided through Dr. Corneal. The Supreme
11 Court has made clear that an expert witness must be subject to confrontation. *See*
12 *Commonwealth v. Melendez-Diaz*, 557 U.S. 305 (2009); *see also Bullcoming v. New*
13 *Mexico*, 564 U.S. 647, 664 (2011). However, rather being given the opportunity to
14 confront Dr. Dutra, the medical examiner who performed the autopsy and authored
15 the autopsy report, Dr. Dutra's findings were presented through Dr. Corneal. But Dr.
16 Corneal did not conduct an independent evaluation. Rather, her testimony was based
17 solely upon her review of Dr. Dutra's work. She testified she reviewed the autopsy
18 report authored by Dr. Dutra and an investigative file—presumably produced by the
19 coroner's office—that included photographs taken during the autopsy. Dr. Corneal
20 never indicated that her testimony was based upon her own conclusions and opinions
21 after an independent evaluation of the evidence. As such, the record suggests that
22 Dr. Corneal acted as a surrogate for the findings and opinions contained in Dr.
23 Dutra's autopsy report.

24 Counsel was ineffective for failing to object to Dr. Corneal's testimony on this
25 ground. There was no feasible strategic reason for trial counsel's failure to object to
26 the admission of testimonial hearsay through Dr. Corneal.

1 Glover was prejudiced by counsel's failure to object to this testimony. There
2 was a reasonable probability that such an objection would have led to the testimony
3 being excluded. This exclusion would have resulted in the omission of a critical
4 element of the homicide charge—cause and manner of death—which would like
5 probably led at least one juror to find reasonable doubt.

6 Accordingly, Glover's right to the effective assistance of counsel was violated.
7 The writ should be granted, the judgment of conviction vacated, and a new trial
8 ordered.

9
10 **Ground Four: Glover was deprived of his right to the effective**
11 **assistance of counsel under the Sixth and Fourteenth**
12 **Amendments to the United States Constitution because**
13 **the public defender's office possessed a conflict of**
interest due to its prior representation of the victim in
a criminal case

14 **Statement of Exhaustion:** This claim was raised, and decided, in the state
15 post-conviction appeal. (9/23/2021 OB in No. 82700; 02/03/2022 Order of Affirmance.)

16 A defendant has the right to the effective assistance of counsel free of any
17 conflicts of interest. If a defendant can establish that his attorney harbored an actual
18 conflict of interest and the conflict adversely affected his attorney's performance,
19 prejudice is presumed.

20 Glover was represented by an attorney with the Clark County Public
21 Defender's Office. However, trial counsel failed to disclose the Public Defender's
22 former representation of the victim, Patrick Fleming, in two criminal cases. The
23 Public Defender represented Fleming in Las Vegas Justice Court case number
24 01M20858X. In that case the court convicted Fleming of Battery Domestic Violence
25 following a bench trial. (01/04/2021 Amended State Petition, Ex. B.) The Public
26 Defender also represented Fleming in Las Vegas Justice Court in case number
27

1 10F15357X, where Fleming pleaded Nolo Contendere to a charge of Disorderly
2 Conduct. (*Id.*)

3 Glover was deprived of his right to the effective assistance of counsel based on
4 the conflict of interest due to his counsel's prior representation of the victim. The
5 Public Defender's Office represented Glover on a case in which he was convicted of
6 battery domestic violence. That crime generally includes acts that are considered
7 violent in nature towards someone who had a familial or romantic relationship with
8 Fleming.¹ There is reason to believe that, because Glover was connected to Fleming's
9 family through Angela, he would have been aware of this prior behavior. That
10 information may have been used to support a self-defense claim during Glover's trial.
11 Such a defense would have been bolstered by trial testimony revealing: (1) Fleming
12 initiated a confrontation with Glover following a heated confrontation with Sutton
13 and Veasley; (2) Fleming pushed Sutton to the side when she attempted to deescalate
14 the confrontation between Fleming and Glover; and (3) Fleming was in physical
15 possession of a firearm at the time of his death. (08/01/2018 Trial Tr. at 52; 08/02/2018
16 at 15.) However, the Public Defender's Office would have had an ethical obligation to
17 refrain from using any information from the prior case to assist Glover establish a
18 self-defense argument. Thus, there was a significant risk that the representation of
19 Fleming materially affected trial counsel's ability to represent Glover. As such, an
20 actual conflict of interest existed.

21 Accordingly, Glover's right to the effective assistance was violated. The writ
22 should be granted, the judgment vacated, and a new trial ordered.
23
24

25
26 ¹ Under NRS 200.481(1)(a) a "battery" means any willful and unlawful use of
27 force or violence upon the person of another. A battery domestic violence occurs when
a battery is committed against someone who has a familial or romantic relationship
with the defendant. NRS 33.018.

1 **Ground Five:** Glover was deprived of his right to the effective
 2 assistance of counsel under the Sixth and Fourteenth
 3 Amendments to the United States Constitutional when
 4 his attorney failed to impeach a critical witness with her
 5 inconsistent prior statement in which she told
 6 detectives a different story about the shooting than the
 7 one she gave in her trial testimony

8 **Statement of Exhaustion:** This claim has not been presented to the state
 9 court.

10 A defendant is entitled to the effective assistance of counsel. To establish a
 11 claim that an attorney provided constitutional ineffective representation, a defendant
 12 must establish that his attorney's performance was deficient, in that counsel's
 13 performance fell below an objective standard of reasonableness, and this deficient
 14 performance caused him prejudice, in that but for counsel's deficient performance,
 15 there is a reasonable probability the outcome of the proceedings would have been
 16 different.

17 **A. Factual Background**

18 In December 2015, Patrick Fleming, his wife Miranda Sutton, their 21-year-
 19 old daughter Akira Veasley, and their 12-year-old twins, moved into a townhouse in
 20 North Las Vegas with their goddaughter Angela. (08/01/2018 Trial Transcript ("Trial
 21 Tr.") at 42-44, 91.) Shortly after that, around Christmas Eve, Shawn Glover moved
 22 into the townhouse. Glover and Angela have a daughter in common. (*Id.* at 45-46.)

23 Sutton and Veasley testified at trial that, on the morning of January 1, 2016,
 24 Glover shot and killed Fleming. However, in their initial statements to the police
 25 given on the day of the shooting, neither Sutton nor Veasley stated that Glover had
 26 committed the shooting. Rather Sutton indicated that she did not know who shot
 27 Fleming and Veasley indicated the shooter was a man named Hatch, who had come
 over to the house to buy marijuana from Fleming.

1 In contrast to their initial statements to the police, Sutton and Veasley testified
2 at trial that on the morning January 1, 2016, Glover shot Fleming after a
3 confrontation between them in the townhouse. The incident began when Fleming had
4 returned from taking Angela to work. (08/01/2018 Trial Tr. at 46-48.) Fleming got
5 into an argument with Veasley over her behavior the night before. (08/01/2018 Trial
6 Tr. at 46-48, 92.) The argument was loud and took place in the downstairs garage.
7 Sutton was present in the garage during the argument. (*Id.*)

8 According to Sutton, at some point during the argument, Glover came
9 downstairs with the phone and told Sutton that Angela was on the phone and wanted
10 to speak to her. (*Id.* at 49-50.) After Miranda told Angela that everything was okay,
11 Glover went back upstairs. (*Id.*) Later, as the argument in the garage was winding
12 down, Glover returned to the garage. Sutton testified that Glover asked her to come
13 upstairs with him, which she did. She claimed that Glover asked her if she wanted
14 him to handle the situation. She told him that everything was fine and not to worry.
15 (*Id.*)

16 Sutton testified that shortly after Fleming and Veasley had come back upstairs
17 Fleming confronted Glover about wanting to talk to his wife. (*Id.* at 52.) Glover
18 indicated he was concerned because of the heated argument in the garage. (*Id.*)
19 According to Sutton, when Fleming attempted to touch Glover on his shoulder, Glover
20 pulled away “like man, get off me, you’re too close to me.” (*Id.*) Fleming then looked
21 at Glover and said “do we have a problem, do we need to talk?” Fleming suggested he
22 and Glover go downstairs to talk. (*Id.*)

23 Sutton told Fleming that he did not need to talk to Glover, but Fleming pushed
24 Sutton to the side and walked downstairs. (*Id.*) Glover followed Fleming down the
25 stairs. Sutton then went towards Angela’s bedroom when she heard three gunshots.
26 (*Id.* at 53-54.) Sutton and Veasley ran to the landing at the top of the stairs and saw
27 Fleming lying on the floor and Glover standing over him holding a gun. (*Id.* at 53-54,

1 96.) Sutton testified that Glover pointed the gun at her and said something to the
2 effect of “don’t tell on me.” Sutton later testified that Glover threatened her, saying
3 “if you and your kids want to live, you’ll shut the fuck up.” (*Id.* at 54.) Glover left and
4 Veasley called 911. (*Id.* at 55-56.)

5 On cross examination, defense counsel attempted to impeach Sutton with her
6 prior inconsistent statements. Sutton admitted that, in the 911 call, she stated that
7 her husband had answered the door and he had been shot. (08/01/2018 Trial Tr. at
8 68.) She acknowledged that someone was supposed to come over, but she did not know
9 who it was. (*Id.*) She further admitted that she told the 911 operator that she did not
10 know who had shot her husband. (*Id.*) She believed that she also told the 911 operator
11 that she had been threatened. (*Id.*)

12 However, defense counsel failed to impeach Sutton with her statements to the
13 detectives on the day of the shooting. Sutton acknowledged that the detectives had a
14 recording device and they wanted to record the conversation. (08/01/2018 Trial Tr. at
15 69.) She could not remember if it had been recorded. (*Id.*)

16 Counsel then sought to question her about the substance of her prior statement
17 to the detectives. However, counsel failed to actually impeach her with the statement.
18 Counsel began by asking her whether she informed the detectives that Fleming was
19 looking for a re-up. (08/01/2018 Trial Tr. at 70-71.) In response, Sutton became
20 evasive. At first, she changed the subject and began discussing other aspects of her
21 prior statement. Counsel asked her again and Sutton replied, “I may have said that.”
22 (*Id.* at 71.) Rather than impeach her with the actual language of the statement,
23 counsel asked her, “Would looking at your statement to the police on September 1st
24 refresh your recollection?”² Sutton said no. Counsel asked why. Sutton said that she
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26
27 ² It is not clear why counsel said September 1. There was no statement from
September 1. The statement he was referencing was clearly January 1, 2016.

1 did not sign a written statement or write a statement because she was in fear. She
2 explained that she asked the officers to stay and protect them, but they would not.
3 (*Id.*)

4 Counsel continued to frame the impeachment question as whether Sutton
5 “recalled” telling the detective her inconsistent statements. Counsel asked, “**You**
6 **don’t recall** telling the detectives that the deal didn’t go through, I know this
7 morning he kept saying he had to recop or get some weed?” (*Id.* (emphasis added).)
8 Sutton, once again, redirected her answer away from the question and stated that
9 she believed she and her kids were in danger. (*Id.*) Defense counsel followed up by
10 attempting to get her to confirm she had said this. Sutton refused to do that. After
11 her refusal, counsel then asked whether she recalled making the statement. Sutton
12 said no. (*Id.* at 71-72.) Counsel again asked whether she recalled saying it. Sutton
13 answered that she could have said it, but she was “not sure what I said after that. I
14 was distraught, I was still shaking, and I was still asking for services that they could
15 not provide. So I’m not exactly sure. I didn’t even want to give out his name because
16 I was so scared.” (*Id.* at 72.) Counsel then asked, “Okay. Maybe because it’s a lie,
17 right?” The prosecutor’s objection to the question as argumentative was sustained.
18 (*Id.*)

19 Counsel then asked, “Do you recall telling the detectives that your husband
20 had to make a run, and it was something to do with weed, and he kept talking about
21 it the night before?” Sutton responded, “You keep asking me these questions, but I’m
22 not familiar with them. I’m not exactly sure what I told them.” (*Id.* at 73.) Once again,
23 Sutton stated that the police refused to protect her and her family. (*Id.*) Counsel
24 moved on to other subjects.

25 After questioning her about the argument between Fleming and Veasley
26 occurred, counsel asked Sutton, “Okay. So, that part of your statement to the police
27

1 on January 1 you have a perfect recollection of, right?” Sutton responded that she was
2 not sure. (*Id.* at 75.)

3 Counsel returned to the January 1 statement to the police and asked her, “In
4 your statement to police on January 1st, you indicated to them that you didn’t get a
5 good look at the suspect, is that correct?” Sutton replied, “I’m not exactly sure.” (*Id.*
6 at 76.) Sutton explained that she was afraid when the officers would not stay with
7 them. (*Id.*) Counsel asked, “And, again, there’d be no point to show you the
8 transcript?” Sutton answered, “No.” (*Id.*)

9 Counsel then asked whether she remembered telling the police that her
10 memory was off since her last surgery. Sutton said, “No. I told them that I had a lot
11 of things going on since my last surgery, but my memory wasn’t off that—not to know
12 what had had happened to my husband.” (*Id.* at 76.) Counsel followed up, “And that’s
13 why you told the police you didn’t know who shot your husband on January 1st?”
14 Sutton denied that. She said, “I told the police that when they told me that they could
15 not stay there with me and my kids in the house. . . .” (*Id.*) Counsel then asked her
16 whether she recalled telling the officers she couldn’t describe the individual because
17 her memory was kind of off since my last surgery.” Sutton, once again, changed the
18 subject and said what she could remember about what happened. (*Id.* at 77.)

19 Later, counsel asked whether she recalled stating that the individual came in
20 through the front door on January 1. Sutton said she wasn’t sure. She added, “[T]hat’s
21 my whole point to you. I’m not exactly sure what I said to the officers January 1st,
22 because I was scared and alone with my husband still laying down there and my kids
23 in a room somewhere that I don’t even know about.” (*Id.* at 78.)

24 After asking Sutton whether she lied to the police, Sutton said she was not
25 sure if she lied to them since she did not write out a statement. Counsel then asked
26 her whether she had any recollection of the police recording a statement. Sutton said,
27

1 “No, not today because I never signed anything that day.” She added, once again, she
2 was scared. (*Id.* at 79.)

3 On redirect, the prosecutor asked Sutton whether, when she spoke to the
4 detectives on January 1, she believed that Glover had committed other acts of
5 violence at the time she spoke to the police. Sutton said yes, she knew about his
6 history. (*Id.* at 89.) Afterwards, the court instructed the jury that this testimony could
7 be considered by the jury solely for the purpose of explaining the state of mind of the
8 witness at the time she made her statement to police on January 1, 2016. (*Id.* at 89-
9 90.)

10 Counsel never sought to admit into evidence Sutton’s prior inconsistent
11 statements to the police detectives.

12 For her part, Veasley admitted on cross examination that she initially told the
13 police that someone named Hatch, who had come over to buy marijuana from
14 Fleming, had shot Fleming. She also indicated that Hatch had been waiting upstairs
15 during the argument, but at some point had come downstairs to talk to Sutton. She
16 further stated that Fleming was upset about Hatch sticking his nose into family
17 business. (*Id.* at 103-05.)

18 **B. Argument**

19 Counsel was ineffective for failing to impeach Sutton with her prior
20 inconsistent statement to the police. Glover’s main defense at trial was that the
21 State’s most important witnesses against Glover told an entirely different story at
22 trial than the one they told the police on the day of the shooting. Sutton’s prior
23 inconsistent statement to the police was a central component of that defense.
24 However, counsel utterly failed to impeach Sutton with the statement. There is a
25 basic way that a witness can be impeached through the use of a prior inconsistent
26 statement. The attorney confirms the witness’s current testimony. The attorney then
27 confirms that the witness made a prior statement. The final step is to then ask the

1 witness about the specific language in the prior inconsistent statement. If the witness
2 refuses to acknowledge the content of the statement, then the attorney can seek to
3 admit the statement. *See* NRS 51.035 (prior inconsistent statements are not hearsay).

4 Counsel simply failed to do that here. Most importantly, counsel failed to get
5 the prior inconsistent statement into evidence. Counsel's approach was misguided
6 from the start. When counsel first began questioning Sutton about her prior
7 inconsistent statement, he did not make clear the exact contents of her prior
8 statement. He paraphrased it and spoke about it in broad terms. However, counsel
9 had the right to use the exact language of the statement in his question. Counsel
10 could have gone so far *as simply reading the transcript of the statement*.

11 But the more prejudicial mistake was his inadequate and misguided response
12 to Sutton's answers. Sutton refused to confirm the contents of her prior statement.
13 Instead, she kept repeating that she did not remember. In response, counsel had the
14 right to admit the prior statement into evidence. Rather than pursue this important
15 step, counsel instead focused on whether Sutton remembered her prior statement.
16 But her memory of the statement was irrelevant for this type of impeachment. So
17 long as the parties had the opportunity to question her about the statement, which
18 clearly occurred, counsel was allowed to admit the prior inconsistent statement into
19 evidence. *See* NRS 51.035. He did not need to waste time, and cede control of the
20 questioning over to Sutton, by inquiring into her memory of the statement. He just
21 needed to admit the prior inconsistent statements. Based on Sutton's refusal to
22 answer his questions about the contents of her statement to the police, the jury was
23 simply not allowed to consider what Sutton had previously said to the detectives.

24 At bottom, the goal of this type of impeachment was to get the exact contents
25 of the prior inconsistent statement into evidence so that the jury could use it to assess
26 Sutton's credibility. That was either through Sutton admitting that she said the
27 statements or, if she refused to acknowledge those statements, to then admit them

1 into evidence. Counsel did not do that here. This was a critical mistake. There was
2 no strategic justification for this error.

3 This deficient performance prejudiced Glover. Sutton's prior inconsistent
4 statements to the police were the central component of the defense. Sutton's
5 testimony, even more than Veasley's, was critically important to the prosecution's
6 case. She provided the details about the entire incident, including Glover's alleged
7 motivation for the shooting. Attacking her credibility was fundamental to the defense.
8 Counsel's inability to properly impeach her with the prior inconsistent statements in
9 which she told an entirely different story about what occurred, resulted in the jury
10 being unable to consider the substance of the prior statement. There can be no doubt
11 that there is a reasonable probability that, but for counsel's error, the outcome of the
12 proceedings would have been different.

13 Accordingly, Glover's right to the effective assistance of counsel was violated.
14 The writ should be granted, the judgment of conviction vacated, and a new trial
15 ordered.

PRAYER FOR RELIEF

Accordingly, Shawn Glover, Jr., respectfully requests that this Court:

1. Issue a writ of habeas corpus to have Glover brought before the Court so that he may be discharged from his unconstitutional confinement;
2. Conduct an evidentiary hearing at which proof may be offered concerning the allegations in this amended petition and any defenses that may be raised by respondents; and
3. Grant such other and further relief as, in the interests of justice, may be appropriate.

Dated August 1, 2023.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Jonathan M. Kirshbaum
Jonathan M. Kirshbaum
Assistant Federal Public Defender

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury under the laws of the United States of America and the State of Nevada that the facts alleged in this petition are true and correct to the best of counsel's knowledge, information, and belief.

Dated August 1, 2023.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Jonathan M. Kirshbaum
Jonathan M. Kirshbaum
Assistant Federal Public Defender